

October 24, 2005

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

COMSECY-05-0049R

FROM: Luis A. Reyes */RA Martin J. Virgilio Acting For/*
Executive Director for Operations

SUBJECT: DELEGATION OF AUTHORITY FOR IMMINENT SECURITY THREATS
TO NRC LICENSEES

This memorandum forwards a limited re-delegation of authority for your consideration. The limited re-delegation of authority would allow certain NRC executives to issue "immediately effective orders" to NRC licensees in accordance with 10 CFR § 2.202 when urgent action is needed to mitigate potential radiological consequences of an imminent security threat. The delegated authority will only be implemented by those NRC executives with the authority to issue orders and under the specific limited circumstances described in the memorandum.

To date, both licensees and NRC staff have accomplished a great deal to develop and implement emergency plans and mitigative strategies to minimize the potential for radiological consequence from a security threat. Agreements have been made with the North American Air Defense (NORAD) command to quickly notify NRC of any suspect aircraft in the vicinity of NRC reactor licensees. The NRC has required licensees to develop and implement imminent attack procedures. These procedures contain actions designed to both minimize the potential for and reduce the radiological consequences of an attack. Licensees have been training licensed operators to implement these procedures. The staff are currently implementing tabletop phone drills with licensed senior operators using a protocol developed with NORAD. The staff intends to complete these tabletops by the end of October and develop lessons learned from which further actions may be developed. In addition, the staff issued NRC Bulletin 2005-02, "Emergency Preparedness and Response Actions for Security-Based Events," and are currently reviewing licensee's response. The staff believes that this delegation of authority would be implemented under very unlikely circumstances due, in part, to these efforts. Nevertheless, this delegation is considered an important aspect in the NRC response to these types of events.

Section 161n of the Atomic Energy Act of 1954 (the Act), as amended, provides the Commission with general authority to delegate its functions under the Act to other offices of the Commission, except with respect to certain determinations, findings, actions, certifications, functions, and approvals required of or made by the Commission pursuant to Sections 51, 57b, 61, 108, 123, 145b, 145f, and 161a. These exceptions are discussed in NRC Management Directive (MD) 9.17, "Office of the Executive Director for Operations," Handbook 9.17, Part II, and do not prohibit the delegation of the authority described herein.

The Commissioners

The authority to issue orders is currently discussed in MD 9.17, "Office of the Executive Director for Operations," MD 9.26, "Organization and Functions - Office of Nuclear Material Safety and Safeguards," and MD 9.27, "Organization and Functions - Office of Nuclear Reactor Regulation," and reflect the Commission's delegation of this authority to the Executive Director for Operations (EDO), the Director of the Office of Nuclear Reactor Regulation (NRR), and the Director of the Office of Nuclear Material Safety and Safeguards (NMSS) of the authority to issue orders to NRC licensees in accordance with 10 CFR § 2.202. 10 CFR 2.202 (a)(5) states, in part, "if the Commission finds that the public health, safety, or interest so requires... the order may provide, for stated reasons, that the proposed action be immediately effective pending further order."

The staff believes it is necessary and appropriate that certain additional NRC executives be given the specific limited authority to issue orders, in the event that an urgent action is needed because of an imminent security threat. This delegation will enhance the NRC mission to protect public health and safety by providing a limited cadre of NRC executives with the authority to ensure that licensees take appropriate measures to mitigate the potential radiological consequences of certain postulated security threats. The additional executives will include the Deputy Executive Director for Reactor and Preparedness Programs, the Deputy Executive Director for Materials, Research, State and Compliance Programs, the Director, Office of Nuclear Security and Incident Response (NSIR), and the Deputy Director, NSIR.

This delegation will be limited to the authority to issue an "immediately effective order" under circumstances involving one or more NRC licensed facilities or nuclear materials licensees subject to NRC jurisdiction in a situation when urgent action is needed due to an imminent security threat (e.g., an imminent aircraft threat). It is expected that the unlikely need to issue an "immediately effective order" will occur in a very time-limited fashion. Therefore, the staff determined that the decision must be made by any NRC executive given this authority. Given the time-limited aspect of this situation, it is likely that the NRC executive who is most informed of the imminent security threat situation will be tasked with this decision. The staff recognized that this philosophy differs from the traditional chain-of-command structure and that this concept is an important aspect of the delegation to ensure NRC is efficient and timely when needed. The "immediately effective order" is limited to ordering an NRC licensee to implement existing facility procedures governing actions necessary to mitigate the potential radiological consequences of the specific imminent security threat. Once an order is given to an NRC licensee, the NRC executive shall initiate actions to promptly inform the Commission and the NRC executive team. An oral order issued pursuant to the authority delegated here must be reduced to writing within a reasonable time.

The Commissioners

Once approved, the staff intends to incorporate this delegation into the appropriate NRC Management Directives.

SECY please track.

Attachment: Draft memorandum from Luis A. Reyes
delegating authority to issue orders in
accordance with 10 CFR § 2.202

cc: SECY
OGC
DOC
OCA
OPA
CFO

MEMORANDUM TO: Deputy Executive Director for Reactor and Preparedness
Office of the Executive Director for Operations
Deputy Executive Director for Materials, Research, State
and Compliance Programs
Office of the Executive Director for Operations
Director, Office of Nuclear Security and Incident Response
Deputy Director, Office of Nuclear Security and Incident Response

FROM: Luis A. Reyes, Executive Director of Operations

SUBJECT: DELEGATION OF AUTHORITY FOR IMMINENT SECURITY THREATS

The purpose of this memorandum is to delegate limited authority to certain NRC executives to issue "immediately effective orders" to NRC licensees in accordance with 10 CFR § 2.202 when urgent licensee action is needed to mitigate the potential radiological consequences of an imminent security threat. This delegation of authority is to be implemented only under the specific circumstances described herein and is delegated only to the addressees of this memorandum.

NRC Management Directive (MD 9.17), "Office of the Executive Director for Operations," MD 9.26, "Organization and Functions - Office of Nuclear Material Safety and Safeguards," and MD 9.27, "Organization and Functions - Office of Nuclear Reactor Regulation," reflect the Commission's delegation to the Executive Director for Operations (EDO), the Director of the Office of Nuclear Reactor Regulation (NRR), and the Director of the Office of Nuclear Material Safety and Safeguards (NMSS) of the authority to issue orders to NRC licensees in accordance with 10 CFR § 2.202.

I have determined that it is necessary and appropriate that certain additional NRC executives be given the specific limited authority to issue orders, in the event that an urgent action is needed because of an imminent security threat.

The Deputy Executive Director for Reactor and Preparedness Programs, the Deputy Executive Director for Materials, Research, State and Compliance Programs, the Director, Office of Nuclear Security and Incident Response (NSIR), and the Deputy Director, NSIR, are hereby delegated the authority to issue "immediately effective" orders, including oral orders, when "the public health, safety, or interest" as described in 10 CFR § 2.202(a)(5) so requires.

This delegation is limited to the authority to issue an "immediately effective" order under circumstances involving one or more NRC licensed facilities or nuclear materials licensees subject to NRC jurisdiction in a situation when urgent action is needed due to an imminent security threat (e.g., an imminent aircraft threat).

Attachment

The “immediately effective” order is limited to ordering an NRC licensee to implement existing facility procedures governing actions necessary to mitigate the potential radiological consequences of the specific imminent security threat. Once an order is given to an NRC licensee, the NRC executive issuing the order shall initiate actions to promptly inform the Commission and the NRC executive team. An oral order issued pursuant to the authority delegated here must be reduced to writing within a reasonable time.

This authority may not be re-delegated and remains in effect until superceded, modified or revoked by the Executive Director for Operations or the Commission.

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
SECY
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DOC
OCA
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CFO